

NO.: 3:10-514

**IN THE
APPELLATE COURT OF THE STATE OF ILLINOIS
THIRD JUDICIAL DISTRICT**

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellant,

v.

DREW PETERSON,

Defendant-Appellee.

) Appeal from the Circuit Court
) of the 12th Judicial Circuit
) Will County, Illinois
)
) Indictment No. 09 CF 1048
)
)
) Honorable Stephen D. White
) Judge Presiding

MOTION TO DISMISS THE STATE'S APPEAL OF THE TRIAL COURT'S MAY 18, 2010 ORDER ADMITTING HEARSAY STATEMENTS BECAUSE THE APPEAL WAS FILED 49 DAYS AFTER THE ORDER AND IS JURISDICTIONALLY DEFECTIVE

NOW COMES the Defendant **Drew Peterson**, by all counsel of record, requesting that this Court dismiss the State's appeal in this case as it relates to the Court's May 18, 2010 order allowing for certain hearsay statements to be admitted. In support of this request, Defendant states the following:

1. On May 18, 2010, the trial court entered a written order on the State's "Amended Motion to Admit Statements and Clarify the People's Intent to Proceed Under All Provisions of 725 ILCS 5/115-10.6, Including the Common Law Doctrine of Forfeiture by Wrongdoing in Paragraph (g), Filed Under Seal Pursuant to Prior Order" ("Amended Motion") admitting some hearsay statements, and refusing to admit others. A copy of the Order is included with the exhibits as Exhibit 'A'.^[11]

2. The State did not file an appeal of the May 18 Order within thirty (30) days. Nor did they file for reconsideration within 30 days.

3. On June 30, 2010, the State filed a “*Motion to Admit Hearsay Statements Under the Common Law Doctrine of Forfeiture by Wrongdoing of Federal Rule of Evidence 804(b)(6)*.” In fact, the Motion was simply a late Motion to Reconsider the May 18 Order. A copy of that Motion is included with the exhibits as Exhibit ‘B’.

4. In the June 30 Motion to Reconsider, the People conceded that their previously filed “*Amended Motion to Admit Hearsay Statements*” that resulted in the May 18 Order, had requested admissibility under the statute, Common Law Forfeiture and Federal Rule of Evidence 804(6). (See *Amended Motion*, paragraph 2) [\[2\]](#).

5. The State’s *Amended Motion* that is at issue was filed in 2009. It was the subject of a lengthy hearing in early 2010. Within, the State listed various statements they wanted the Court to admit at Mr. Peterson’s trial. Their prayer for relief was: “*Wherefore, the People respectfully request this Court conduct a hearing pursuant to 725 ILCS 5/115-10.6, including by reference the established common law doctrine of forfeiture by wrongdoing referenced in 725 ILCS 5/115-10.6(g), to allow the People to present the above statements at trial as substantive evidence.*” A copy of the State’s *Amended Motion* is included with the exhibits as Exhibit “C”.

6. The State did not file their Motion to Reconsider the Court’s May 18 Order until June 30, 2010, 42 days after the Order. That Motion (Exhibit “B”), although titled as a Motion to Admit (just as the other earlier filed Motions had been titled) was actually an untimely Motion to Reconsider. In paragraph 7 of their pleading, the State wrote “*Given Hanson, the People request that this Court reconsider its decision*

to deny the People's request to admit the hearsay statements previously not admitted under the statutory criteria, and that this Court find that the hearsay statements are admissible at trial under the common law doctrine of forfeiture by wrongdoing and Federal Rule of Evidence 804(b)(6)."

7. The State similarly requested in their prayer for relief "*WHEREFORE, the People request this Court to reconsider its ruling on the statements previously excluded under the statutory criteria, and, pursuant to the common law doctrine of forfeiture by wrongdoing and Federal Rule of Evidence 804(b)(6), admit those statements at trial.*"

8. The Motion to Reconsider was denied July 6. [\[3\]](#)

9. It is the body of a Motion that governs its purpose, not its' title. *Shutkas Electric Co., v. Ford Motor Co.*, 366 Ill.App.3d 76, 851 N.E.2d 66 (2006); *J.D. Marshall International, Inc. v. First National Bank of Chicago*, 272 Ill.App.3d 883, 651 N.E.2d 518 (1995); *Heiden v. DNA Diagnostics Center, Inc.*, 918 N.E.2d, 1083 (2nd Dist. 2009).

10. In the State's Notice of Appeal they have written:

5. Nature of Order appealed from:

the May 18, 2010,(denial of a motion to reconsider July 6, 2010), ruling suppressed [sic] as evidence certain hearsay statements offered under the common law rule of forfeiture by wrongdoing.

The State's Notice of Appeal, on its' face, admits a lack of jurisdiction, because the order entered on July 6, 2010, addressed the Motion filed on June 30, 2010.

11. A timely Notice of Appeal is jurisdictional. *Supreme Court Rule 604(a)(1); People v. Taylor*, 50 Ill.2d 136, 277 N.E.2d 878 (1971) (What it is commonly referred

to as the Taylor rule requires a party seeking review of an order appealable under Rule 604(a)(1) to appeal or file a Motion to Reconsider within thirty (30) days). See also, *People v. Williams*, 138 Ill.2d 377, 394, 563 N.E.2d 385 (1990). The only exception to the Taylor rule is where there has been a material change in the facts that could not have been presented earlier with due diligence. *Williams*, 138 Ill.2d 394.

12. The Illinois Supreme Court recently discussed the Taylor rule in *People v. Holmes*, 235 Ill.2d 59, 919 N.E.2d 318 (2009). The *Holmes* court succinctly wrote that: “to avoid application of the Taylor rules bar, a party seeking review of an order appealable under Rule 604(a)(1) must timely appeal or file a Motion to Reconsider within thirty (30) days.” at 235 Ill.2d 65. Here, the prosecution did neither.

13. Defendant asks that this Court immediately consider his Motion to Dismiss, and dismiss this appeal on this Motion, rather than have the matter of jurisdiction taken with the Briefs.

WHEREFORE, for all of the foregoing reasons, Defendant requests that this Court Dismiss the State’s Appeal of the Trial Court’s May 18, 2010 Order Admitting Hearsay Statements Because the Appeal was Filed 49 Days After the Order and is Jurisdictionally Defective, and for such further and other relief as this Court deem just.

Respectfully submitted,

Drew Peterson, Defendant

By: _____
One of His Attorneys

AFFIDAVIT

I, **Steven A. Greenberg**, certify under penalties of perjury that the statements set forth in the foregoing Defendant’s Motion to Dismiss the State’s Appeal of the Trial Court’s May 18, 2010 Order Admitting Hearsay Statements Because the Appeal was Filed 49 Days After the Order and

is Jurisdictionally Defective are true and correct except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Steven A. Greenberg

Signed and Sworn to before me
this ____ day of July, 2010

Notary Public

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[1] Because this Motion to Dismiss concerns a Sealed Order the exhibits are being filed separately.

[2] The State filed several versions of the Amended Motion. Each requested the same relief. The hearing was actually had on the Second Amended Motion.

[3] Defendant objected to the un-timeliness of the State's motion in the trial court. In response the State suggested there was re-vestment of jurisdiction. Re-vestment as a doctrine extending the time to appeal was rejected in *People v. Holmes*, 235 Ill.2d 59, 919, N.E.2d 318 (2009).
